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JUN 08 1995

**PATRICK J. FLEMING**  
PARKER COUNTY ATTORNEY  
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Opinion Committee

June 5, 1995

Attorney General Dan Morales  
Opinion Committee  
P. O. Box 12548  
Austin, Texas 78711-2548

RD-863

FI

I.D. #

ML-34144-95  
34144

Re: Request for Written Opinion

Dear General Morales,

At the request of the Commissioner's Court of Parker County and on behalf of the Treasurer and Auditor of Parker County, I am herewith requesting your written opinion concerning the payment of health care costs for indigent prisoners in the Parker County Jail.

The Parker County Hospital District, hereinafter referred to as P.C.H.D., was created in 1965 by special act of the 59th Legislature, see: Vernon's Ann.Civ.St. Art. 4494q. I have enclosed a copy of the enabling legislation for your review. P.C.H.D. has the same boundaries of Parker County. All the board members of P.C.H.D. are elected and are not appointed by Commissioner's Court.

My questions are:

1. Is P.C.H.D. or Parker County responsible for the payment of health care costs for the indigent prisoners in the Parker County Jail who are residents of Parker County including outpatient and inpatient care, dental care and pharmaceutical costs?
2. Is P.C.H.D. or Parker County responsible for the payment of all health care costs of an indigent prisoner in the Parker County jail who is a resident of another state?
3. Is P.C.H.D. or Parker County responsible for the payment of all health care cost of an indigent prisoner in the Parker County Jail who is a resident of any other county in Texas? If not, should P.C.H.D. bill the county, county hospital or hospital district of the indigent prisoner's residency for health care costs incurred by that inmate for medical services rendered by P.C.H.D.?
4. May P.C.H.D. establish an indigent health care policy that provides for a lesser amount of medical services than the amount of medical services that an indigent prisoner is entitled to under federal or state laws?
5. May P.C.H.D. establish an application for indigent health care that requests so much information that it is impossible for an inmate to complete the application in order to be

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considered for indigent health care services? For example, requiring the applicant to provide copies of his income taxes for the last three years.

6. If P.C.H.D. has rendered medical services for a prisoner who is not indigent, should P.C.H.D. seek payment from that prisoner and not from Parker County?
7. If the indigent inmate in the Parker County Jail is a state prisoner, does Parker County pay for the costs of medical services or does the state pay these costs? Should P.C.H.D. bill the State or the county of residence for medical service rendered to such a prisoner?
8. May Parker County levy and collect taxes for the costs of medical care for indigent prisoners in the Parker County Jail?
9. Who determines whether an inmate is indigent and thus entitled to indigent health care services? May the one who makes such a determination do so in a fashion that deprives the inmate of health care as required by law?
10. What are the remedies should P.C.H.D. fail to carry out it's obligation under law regarding these issues? Is that remedy mandamus, criminal prosecution of those in charge of P.C.H.D. for official misconduct, removal from office of those board members who fail in their responsibility, or joining P.C.H.D. as a cross defendant in Civil Rights cases against Parker County for failure to provide adequate health care to indigent inmates?

Timothy J. O'Shaughnessy is the attorney for P.C.H.D., and he has prepared a brief concerning these issues which is enclosed herewith.

I have enclosed a copy of DM-225 of which P.C.H.D. is aware but refuses to follow. I have also enclosed a brief from Bickerstaff, Heath and Smitey, L.L.P. entitled Indigent Prisoners - Who Pays. Also enclosed are three papers from Allison and Associates which are entitled Indigent Care: When is the County Responsible, Who is Responsible For Prisoner Care, and Recent Developments Concerning the Indigent Health Care and Treatment Act. These enclosures sum up my legal arguments fairly well. But I would like to, if I may, direct your attention to Article 9 and Section 9 of the Texas Constitution and Section 20 of the enabling legislation creating the Parker County Hospital District.

Vernon's Ann. Tex. Const. Art. 9, § 9 provides in part, "The Legislature may by general or special law provide for the creation, establishment, maintenance and operation of hospital districts .... providing that any district so created shall assume full responsibility for providing medical and hospital care for it's needy inhabitants .... providing that after it's creation no other municipality or political subdivision shall have the power to levy taxes or issue bonds or other obligations for hospital purposes or for providing medical care within the boundaries of the district....".

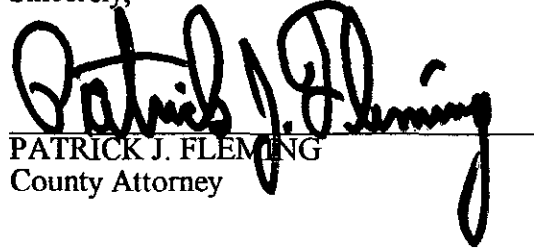
Section 20 of the enabling legislation provides, "After creation of the hospital district, neither Parker County, Texas, nor any city or town therein shall thereafter issue bonds or other evidence of indebtedness for hospital purposes or for medical treatment of indigent persons within such boundaries, nor shall such political subdivisions levy taxes for either of such purposes. The said hospital district shall assume full responsibility for the operation of all hospital facilities for the furnishing of medical and hospital care of indigent persons within it's boundaries".

Both the constitution and the enabling legislation, in simple terms, clearly require that P.C.H.D. assume the full responsibility of providing medical care for indigents within the district's boundaries, and both plainly prohibit Parker County from collecting taxes to fund indigent health

care. "Full responsibility", by its own terms, means the entire responsibility and does not exclude any class of indigents in need of health care.

Please contact me should you have any questions or need any additional information.

Sincerely,



PATRICK J. FLEMING  
County Attorney

PJF/pb

cc: Ben Long, County Judge  
Timothy J. O'Shaughnessy  
File



State of Texas  
House of Representatives

David Counts  
State Representative

Member:

Natural Resources, Chairman  
Insurance Committee  
Redistricting Committee  
Sunset Advisory Commission  
Legislative Oversight Committee  
on Workers' Compensation

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Opinion Committee

August 1, 1995

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The Honorable Dan Morales  
Attorney General of Texas  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548

Attention: Opinions Committee

Dear General Morales:

I would like to officially request that Opinions Case Number RQ-608 be officially reopened by your office and that an official Attorney General's ruling be made.

This request was made during August of 1993, but was subsequently closed due to pending litigation.

Your assistance in this matter would be greatly appreciated.

Sincerely,

*David Counts*

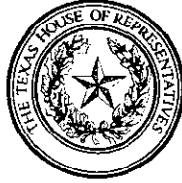
David Counts  
State Representative

DC/jkb

cc. The Honorable Scott Hochberg

District 70: Borden, Fisher, Garza, Howard, Jones, Kent, King, Knox, Lynn, Nolan, Scurry, Stonewall





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August 26, 1993

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Opinion Committee

The Honorable Dan Morales  
Attorney General of Texas  
P.O. Box 12548, Capitol Station  
Austin, Texas 78711-2548

Attention: Opinions Committee

Dear General Morales:

MBJ  
FILE # ML-22095-93  
I.D.# 22095

I request your opinion of the following questions presented in this letter.

Before August 28, 1989, a municipal utility district (MUD) could impose "standby charges" under Section 54.204, Water Code. Section 6, Chapter 1218, Acts of the 71st Legislature, Regular Session, 1989, removed the express authorization for standby charges. Section 1 of that act amended Section 50.056, Water Code, which governs "standby fees" charged on undeveloped property within a district and provides for approval of the charges by the Texas Water Commission.

Section 8 of that act allowed previously adopted standby fees to continue in effect, subject to review and adjustment by the commission on request of a property owner in the district.

Section 54.519, Water Code, governs a MUD's services outside of the district's boundaries. Section 54.519(d) specifically authorizes a district to set and collect "rates, fees, rentals, tolls, or other charges for the use, services, and facilities of the water and sewer system which provide service to areas outside the district which are considered necessary...." Standby charges are not expressly addressed.

The Lakeway Municipal Utility District has imposed standby charges on property outside of the district since before the 1989 act cited above. There has been some controversy regarding whether the charges are valid or collectible. On behalf of the committee, I ask your opinion on the following questions:

(1) May the district impose and collect a standby charge on property outside of the boundaries of the district?

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(2) May the district continue to collect a standby charge imposed on property outside of the boundaries of the district before the effective date of Chapter 1218, Acts of the 71st Legislature, Regular Session, 1989?

(3) May the district bring a lawsuit to collect unpaid standby charges imposed on property outside of the boundaries of the district?

Thank you for your attention to this matter. Please feel free to contact me if any additional information would be of assistance.

Sincerely,

A handwritten signature in black ink that reads "David Counts". The signature is written in a cursive, flowing style with a long horizontal stroke at the end.

David Counts

Chairman, House Natural Resources Committee

DC/sw